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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/785,479	02/25/2004	Engelbert Grunbacher	66374-150-7	1792
25269	7590	06/08/2005	EXAMINER	
DYKEMA GOSSETT PLLC FRANKLIN SQUARE, THIRD FLOOR WEST 1300 I STREET, NW WASHINGTON, DC 20005			VO, HIEN XUAN	
			ART UNIT	PAPER NUMBER
			2863	

DATE MAILED: 06/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/785,479	<b>Applicant(s)</b> GRUNBACHER ET AL.	
	<b>Examiner</b> Hien X. Vo	<b>Art Unit</b> 2863	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 February 2004.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>07/01/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information disclosure statement (IDS) submitted on 07/01/04. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

### ***Drawings***

2. Figure 1 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

3. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

4. The abstract of the disclosure is objected to because it is too long not in within the range of 50 to 150 words. Correction is required. See MPEP § 608.01(b).

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 1 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. With respect to claim 1 (line 6), the word "it" is vague and indefinite what "it" refers to since no reference to relate thereto is recited.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1, 5 rejected under 35 U.S.C. 102(b) as being anticipated by Eagan et al. (U.S. Patent No. 5,521,824).

With respect to claim 1, Eagan et al. disclose the method and apparatus for controlling an engine test apparatus using lead-tag control including an internal combustion engine connected on the drive-side to a dynamometer brake intended as a drive engine of a vehicle whereby a vehicle model and a driving profile for the vehicle are preset through a test bench computer (see e.g. Fig. 2 and col. 4, lines 5-11), and whereby the internal combustion engine runs through the same operating points as it is run during the preset driving cycle corresponding to the vehicle model and the set point defaults of the control units of the internal combustion engine and the dynamometric brake as determined by the test bench design (see e.g. col. 11, lines 20-67), wherein the parameters necessary for the determination of the set point defaults are determined and set on the test bench computer prior to the actual test run and in a measuring phase independent thereof (see e.g. Figs. 6-11), and the operational variables are

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monitored during the actual test run and used for the adjustment of the parameters of the set point defaults (see e.g. cols. 7-8).

With respect to claim 5, Eagan et al. disclose the invention as claimed including the sequence accuracy of the driving profile is changed through different weighting of factors of the parameters during the determination of the set point defaults whereby the type of simulated driver is changed as well (see e.g. col. 13, lines 50-67 and col. 14, lines 1-40).

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 2, 4 rejected under 35 U.S.C. 103(a) as being unpatentable over Eagan et al. (U.S. Patent No. 5, 521,824) and further in view of Nakanishi et al. (EP 1048943A2).

With respect to claims 2 and 4, Eagan et al. disclose the invention as claimed except for teaching at least one quasi-stationary measurement is performed during the pre-established measuring phase in a multi-dimensional performance graph in which always one variable is changed, one is measured, and the remaining variables are kept constant, at least one dynamic measurement is additionally performed in the pre-established measuring phase in which one of the variables is changed in great steps,

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one is measured, and the remaining variables are kept constant. However, Nakanishi et al. disclose the map preparing method used for engine testing apparatus or vehicle testing apparatus, and engine testing apparatus including the pre-established measuring phase in a multi-dimensional performance graph in which always one variable is changed, one is measured, and the remaining variables are kept constant (see e.g. Figs. 2-6), and the pre-established measuring phase in which one of the variables is changed in great steps, one is measured, and the remaining variables are kept constant (see e.g. Figs. 9-11). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply a multi-dimensional performance graph in accordance with the measured variable and phase as taught by Nakanishi et al. to the engine test apparatus of Eagan et al. to provide a test controller that the response of some engines include a dynamic aspect which make the engine's response harder to predict utilizing the typical control strategies.

12. Claim 3 rejected under 35 U.S.C. 103(a) as being unpatentable over Eagan et al., Nakanishi et al. and further in view of Constancis (U.S. Patent No. 6, 311, 670).

With respect to claim 3, Eagan et al. and Nakanishi et al. disclose the invention as claimed except for teaching the measurement is  $n$ ,  $M$  or  $\alpha$  (pedal valuator position). However, Constancis discloses a method for correcting an internal combustion engine torque jerks including the measurement pedal valuator position (see e.g. col. 2, lines 6-7, 25-28). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply a calculation of the value of the accelerator pedal position on the basis of an adapted progressive adjustment formula as taught by

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Constancis to the system of Eagan et al. and Nakanishi et al. to provide as the value of the chosen control parameter or parameters as a function for controlling a test bench for an internal combustion engine.

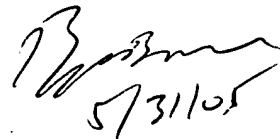
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hien X. Vo whose telephone number is (571) 272-2282. The examiner can normally be reached on M-F (8:00-5:30) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Barlow can be reached on (571) 272-2269. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hien Vo  
05/30/05

**BRYAN BUI**  
**PRIMARY EXAMINER**



5/31/05